

## **3045.505-70**

annual reports (see (FAR) 48 CFR 45.505-14) to the contracting officer not later than September 15 of each year. The contractor's report shall be submitted on DHS Form 0700-05, Contractor Report of Government Property.

### **3045.505-70 Solicitation provisions and contract clauses.**

Contracting officers shall insert the clause at (HSAR) 48 CFR 3052.245-70 in solicitations and contracts when the contract will require Government provided or contractor acquired property.

## **3045.508 Physical inventories.**

### **3045.508-2 Reporting results of inventories.**

The inventory report shall also include the following:

(a) Name and title of the individual(s) that performed the physical inventory;

(b) An itemized, categorized listing of all property capitalized:

- (1) Land and rights therein;
- (2) Other real property;
- (3) Plant equipment;
- (4) Special test equipment; and
- (5) Special tooling;

(c) An itemized listing of the property lost, damaged, destroyed, or stolen, the circumstances surrounding each incident, and the resolution of the incident; and

(d) Any discrepancies between the physical inventory and the contractor's record of Government property.

### **3045.508-3 Quantitative and monetary control.**

Contracting officers shall require the contractor to provide the quantity and unit cost of each item of Government property reported under (HSAR) 48 CFR 3045.508-2(b) and (c).

### **3045.511 Audit of property control system.**

(a) The property administrator (or other Government official authorized by the contracting officer) shall audit the contractor's property control system whenever there are indications that the contractor's property control system may be deficient. Examples of deficiencies are:

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(1) Failure of the contractor to acknowledge receipt of GFP;

(2) Failure of the contractor to submit the annual property reports required by (HSAR) 48 CFR 3045.505-14;

(3) Failure of the contractor to reconcile its physical inventory with its property control record; or

(4) Failure of the contractor to submit a Government property listing when requested by the property administrator.

(b) When it is determined that the contractor's property control system is deficient, the property administrator, in coordination with the contracting officer, shall discuss the deficiencies with the contractor. If the contractor does not take action to correct the deficiencies, the contracting officer shall provide the contractor with a written notice of the deficiencies and the date all deficiencies shall be corrected.

## **PART 3046—QUALITY ASSURANCE**

### **Subpart 3046.7—Warranties**

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AUTHORITY: 41 U.S.C. 418b (a) and (b).

SOURCE: 68 FR 67871, Dec. 4, 2003, unless otherwise note.

### **Subpart 3046.7—Warranties**

#### **3046.702 General.**

#### **3046.702-70 Additional definitions.**

*At no additional cost to the Government*, means without an increase in price for firm-fixed-price contracts, without an increase in target or ceiling price for fixed price incentive contracts (see (FAR) 48 CFR 46.707), or without

an increase in estimated cost or fee for cost-reimbursement contracts.

*Defect* means any condition or characteristic in any supplies or services furnished by the contractor under the contract that is not in compliance with the requirements of the contract.

*Design and manufacturing requirements* means structural and engineering plans and manufacturing particulars, including precise measurements, tolerances, materials and finished product tests for the major system being produced.

*Major system* means a system or major subsystem used directly by the Department of Homeland Security (DHS) to carry out its mission(s), as defined by HSAM Chapter 1234, Major Acquisition Policies and Procedures (for dollar threshold applicable to U.S. Coast Guard, See Coast Guard guidance at (HSAR) 48 CFR 3046.701-90). The term does not include:

(1) Related support equipment, such as ground-handling equipment, training devices and accessories thereto, unless a cost effective warranty for the system would require inclusion of such items; or

(2) Commercial items sold in substantial quantities to the general public as described in (FAR) 48 CFR part 2.

*Performance requirements* means the operating capabilities, maintenance, and reliability characteristics of a system that are determined to be necessary for it to fulfill the requirement for which the system is designed.

#### **3046.703 Criteria for use of warranties.**

(a) *Major Systems.* The use of warranties in the procurement of major systems by the USCG is mandatory, unless waived (see USCG guidance at (HSAR) 48 CFR 3046.792). Other OEs may use the procedures in USCG guidance in this part as a guideline for major systems acquisitions.

#### **3046.705 Limitations.**

(a) The following restrictions are applicable to DHS contracts:

(1) The USCG is required to include a warranty in cost reimbursement contracts for the production of major systems acquisitions.

(2) Any warranty on major system acquisitions shall not apply in the case

of any system or component thereof which has been furnished by the Government to a contractor except as indicated in the USCG guidance at (HSAR) 48 CFR 3046.791-3.

(3) Any warranty obtained shall specifically exclude coverage of damage in time of war or national emergency.

#### **3046.706 Warranty terms and conditions.**

(a) The contracting officer, in developing the warranty terms and conditions, shall consider the following, and, where appropriate and cost beneficial, shall:

(1) Identify the affected line item(s) and the applicable specification(s);

(2) Require that the line item's design and manufacture will conform to:

(i) An identified revision of a top-level drawing; and/or

(ii) An identified specification or revision thereof;

(3) Require that the system conform to the specified Government performance requirements;

(4) Require that all systems and components delivered under the contract will be free from defects in materials and workmanship;

(5) State that in the event of failure due to nonconformance with specification and/or defects in material and workmanship, the contractor will bear the cost of all work necessary to achieve the specified performance requirements, including repair and/or replacement of all parts;

(6) Require the timely replacement/repair of warranted items and specify lead times for replacement/repair where possible;

(7) Identify the specific paragraphs containing Government performance requirements which must be met;

(8) Ensure that any performance requirements identified as goals or objectives in excess of specification requirements are excluded from the warranty provision;

(9) Define what constitutes the start of the warranty period (*e.g.*, delivery, acceptance, in-service date), the ending of the warranty (*e.g.*, passing a test or demonstration, or operation without failure for a specified time period), and circumstances requiring an extension of warranty duration (*e.g.*, extending

the warranty period as a result of mass defect correction during warranty period);

(10) Identify what transportation costs will be paid by the contractor in conjunction with warranty coverage;

(11) Identify any conditions which will not be covered by the warranty, other than the exclusion of combat damage; and

(12) Identify any limitation on the total dollar amount of the contractor's warranty exposure, or agreement to share costs after a certain dollar threshold to avoid unnecessary warranty returns.

(b) Any contract that contains a warranty clause shall contain warranty implementation procedures, including warranty notification content and procedures, and identify the individuals responsible for implementation of warranty provisions. The contract may also permit the contractor's participation in investigation of system failures, providing that the contractor is reimbursed at established rates for fault isolation work, and that the Government receives credit for any payments where equipment failure is covered by warranty provisions.

#### **3046.790 Additional USCG definitions (USCG).**

For the USCG, in accordance with Public Law 99-190, the dollar threshold as it pertains to the inclusion of a warranty in major systems acquisitions is \$10 million.

#### **3046.791 Use of warranties in major systems acquisitions by the USCG (USCG).**

This subpart provides the policy for the USCG to use in obtaining warranties from contractors when contracting for the acquisition of a major system.

##### **3046.791-1 Policy (USCG).**

The USCG shall include a warranty in all contracts for major systems acquisitions. When drafting warranty provisions/clauses for major systems acquisitions, the contracting officer shall ensure that the items listed at (HSAR) 48 CFR 3046.706 have been considered. The warranty shall also meet the following requirements:

(a) For systems or components which are commercially available, such warranty as is normally provided by the manufacturer or supplier shall be obtained in accordance with (FAR) 48 CFR 46.703(d) and (FAR) 48 CFR 46.710(b)(2).

(b) For systems or components provided in accordance with either design and manufacturing or performance requirements as specified in the contract or any modification to that contract, a warranty of compliance with the stated requirements shall be obtained.

(c) The warranty provided under paragraph (b) of this section shall provide that in the event the major system or any component thereof fails to meet the terms of the warranty provided, the contracting officer may:

(1) Require the contractor to promptly take such corrective action as the contracting officer determines to be necessary at no additional cost to the Government, including repairing or replacing all parts necessary to achieve the requirements set forth in the contract;

(2) Require the contractor to pay costs reasonably incurred by the United States in taking necessary corrective action; or

(3) Equitably reduce the contract price.

(d) Any warranty shall specifically exclude coverage of combat damage.

#### **3046.791-2 Tailoring warranty terms and conditions (USCG).**

(a) As the objectives and circumstances vary considerably among major systems acquisition programs, contracting officers shall appropriately tailor the warranty on a case-by-case basis, including remedies, exclusions, limitations and durations, provided the tailoring is consistent with the specific requirements of this subpart and (FAR) 48 CFR 46.706.

(b) Contracting officers of major systems acquisitions may exclude from the terms of the warranty certain defects for specified supplies (exclusions) and may limit the contractor's liability under the terms of the warranty (limitations), as appropriate, if necessary to derive a cost-effective warranty in light of the technical risk,

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contractor financial risk, or other program uncertainties.

(c) Contracting officers are encouraged to structure a broader and more comprehensive warranty where such is advantageous. Likewise, the contracting officer may narrow the scope of a warranty when appropriate (*e.g.*, where it would be inequitable to require a warranty of all performance requirements because a contractor had not designed the system).

(d) Contracting officers shall not include in a warranty clause any terms that require the contractor to incur liability for loss, damage, or injury to third parties.

### **3046.791-3 Warranties on Government-furnished property (USCG).**

A contractor for a major systems acquisition shall not be required to provide the warranties specified in (HSAR) 48 CFR 3046.790-1 on any property furnished to that contractor by the Government except for:

(a) Defects in installation; and

(b) Installation or modification in such a manner that invalidates a warranty provided by the manufacturer of the property.

### **3046.792 Cost benefit analysis (USCG).**

If a specific warranty is considered not to be cost beneficial by the contracting officer, a waiver request shall be initiated in accordance with guidance at (HSAR) 48 CFR 3046.793.

### **3046.793 Waiver and notification procedures (USCG).**

(a) The Secretary of Homeland Security, without delegation, may waive the requirement for a warranty for USCG major system acquisitions when the waiver is in the interest of national defense or if the warranty obtained would not be cost beneficial. A waiver may be granted provided that the Committees on Appropriations of the Senate and the House of Representatives, the Committee on Commerce, Science and Transportation of the Senate, and the Committee on Merchant Marine and Fisheries of the House of Representatives are notified, in writing, of the Secretary's intention to waive the warranty requirements and the reasons supporting such a determination prior

to granting the waiver. The request for Secretarial waiver shall include, as a minimum:

(1) A brief description of the major system and its stage of production (*e.g.*, the number of units delivered and anticipated to be delivered during the life of the program);

(2) The specific waiver requested, the duration of the waiver if it is to involve more than one contract, and the rationale for the waiver; and

(3) All documentation supporting the request for waiver, such as a cost-benefit analysis.

(b) The waiver request shall be forwarded to the Secretary, via the CPO. The USCG shall maintain a written record of each waiver granted and the Congressional notification and report made, together with supporting documentation.

## **PART 3047—TRANSPORTATION**

### **Subpart 3047.3—Transportation in Supply Contracts**

Sec.

3047.305 Solicitation provisions, contract clauses, and transportation factors.

3047.305-70 Solicitation provision.

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### **Subpart 3047.3—Transportation in Supply Contracts**

#### **3047.305 Solicitation provisions, contract clauses, and transportation factors.**

##### **3047.305-70 Solicitation provisions.**

The contracting officer shall insert the following provisions in solicitations, as applicable:

(a) (HSAR) 48 CFR 3052.247-70, F.o.b. Origin Information, with Alternates I or II, as applicable, shall be inserted in accordance with (FAR) 48 CFR 47.305-3(b);

(b) (HSAR) 48 CFR 3052.247-71, F.o.b. Origin Only, shall be inserted in accordance with (FAR) 48 CFR 47.305-3(e); and

(c) (HSAR) 48 CFR 3052.247-72, F.o.b. Destination Only, shall be inserted in